



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201146026

SE:TEP:RA:T2

Uniform Issue List: 408.03-00

AUG 25 2011

Legend:

Taxpayer A ***

IRA X ***

Account 1 ***

Account 2 ***

Financial Institution A ***

Financial Advisor A ***

Amount 1 ***

Amount 2 ***

Amount 3 ***

Check #1 ***

Check #2 ***

Page 2

Date 1 ***

Date 2 ***

Date 3 ***

Date 4 ***

Year 1 ***

Year 2 ***

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Dear ***:

This is in response to your request dated August 24, 2010, submitted on your behalf by your authorized representative, as supplemented with correspondence dated June 28, 2011 and July 20, 2011, in which you request a waiver of the 60-day rollover period contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age , represents that on Date 1, she received a distribution of Amount 1 from IRA X. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d) of the Code was due to errors made by Financial Institution A. Taxpayer A asserts that Amount 1 has not been used for any purpose.

Taxpayer A represents that she maintained five investment accounts with Financial Institution A, including IRA X. Taxpayer A asserts that it was her intention to roll over Amount 1 into a rollover IRA at Financial Institution A and to also transfer Amount 2 to a non-IRA account. During Year 1 and Year 2, Taxpayer A relied upon the advice and services of Financial Advisor A to assist her in completing the appropriate forms to accomplish the transfers. On Date 1, Taxpayer A simultaneously completed applications to transfer Amount 1 from IRA X to a new IRA at Financial Institution A; and to transfer Amount 2 from Account 1, a non-IRA account at Financial Institution A, to a new non-IRA account. On Date 2, Financial Institution A distributed to Taxpayer A Amount 3, the sum of Amount 1 and Amount 2. Taxpayer A deposited Amount 3 into Account 2, a checking account. On Date 3, Taxpayer A mailed Check #1 to Financial Institution A to be deposited into a rollover IRA and a new non-IRA account. Financial Institution A lost Check #1. On Date 4, Taxpayer A mailed Check #2, a reissued check, to Financial Institution A to establish the accounts. Instead, Financial Institution A, deposited the total amount of Check #2 into a non-IRA account. Taxpayer A did not discover this error until Year 1, when Financial Institution A issued a Form 1099 to Taxpayer A that indicated the distribution from IRA X was taxable. Financial Advisor A

was unaware that Financial Institution A lost Check #1 and that it failed to establish a rollover IRA as per Taxpayer A's instructions.

Documentation provided indicates that Financial Institution A incorrectly deposited Amount 1 into a non-IRA account.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A, is consistent with her assertion that her failure to accomplish a timely rollover was due to the errors made by Financial Institution A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a Rollover IRA or another qualified plan. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, contact *** at (***) ***-****.
Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,


Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

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cc: ***

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